



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/053,752      | 01/22/2002  | Edward A. Talbacka   | TALB-002            | 5450             |

7590

11/06/2003

Michael S. Neustel  
Suite No. 4  
2534 South University Drive  
Fargo, ND 58103

|          |
|----------|
| EXAMINER |
|----------|

GREEN, CHRISTY MARIE

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3635

DATE MAILED: 11/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/053,753

Applicant(s)

LAU, LESTER F.

Examiner

Christy M Green

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19, 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is a second office action for serial number 10/053752, entitled Drywall Butt Joint System, filed on January 22, 2002.

#### ***Response to Amendment***

In response to the examiner's office action dated May 5, 2003, the applicant has cancelled claim 20 and added claim 21.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Klammer, US patent # 6,108,990.

Klammer discloses the claimed invention a drywall butt joint system (10 – figure 1) comprising a middle section (15) comprised of an elongate structure having an inner surface (where 15 points to) and an outer surface (see attached figure 1), wherein the inner surface is positioned in opposition to the drywall sheets (18, 20), first and second angled sections (see attached figure 1) extending from opposing edges of the middle section (by 12 and 14) at an obtuse angle (see attached figure 1) with respect to the inner surface (where 15 points to), first and second sections (12, 14) extending from the angled sections respectively substantially parallel to the middle section (figure 1); the middle section (where 15 points to) has a substantially rectangular structure (figure 1);

and, the obtuse angle is greater than 120 degrees (shown to be greater than 180 degrees in the attached figure 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 9, 10, 11 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gunti, US Patent # 4,172,677 in view of Klamer, US patent # 6,108,990.

Gunti discloses the claimed invention a butt joint (10 – figures 1 and 2) comprising a middle section (12) comprised of a **rectangular** elongate structure having an inner surface (where 12 points to- figure 1) and an outer surface (see attached figure 1), first and second angled sections (22 – figure 1, 62 – figure 2) extending from opposing edges of the middle section (12) at an obtuse angle (see attached figure 1) with respect to the inner surface (where 12 points to – figure 1), first and second sections (20 – figure 1, 60 – figure 2) extending from the angled sections respectively substantially parallel to the middle section (figure 1), **wherein the angled sections and the first and second sections extend along an entire length of the angled and middle sections (figures 1 and 2);** a first and second support (24) attached to the opposing outer edges of the first and second sections (20 – figure 1, 60- figure 2)

respectively in a traverse manner, where the supports extend along an entire length of the first and second sections (figures 1 and 2); the middle section, the angles sections and the first and second sections are comprised of a solid metal material (interpreted to be a solid – by definition being without an internal cavity, which is of a three-dimensional structure, the sections are still made of solid metal, although they may have a hole in it); the middle section (where 12 points to) has a substantially rectangular structure (figure 1); and, the obtuse angle is greater than 120 degrees (shown to be greater than 90 degrees in the attached figure 1).

Gunti does not disclose the inner surface of the butt joint positioned in opposition to drywall sheets **and the middle section has a width of at least six inches, the angle sections and supports have a width of 0.5 inches, and the first and second sections are positioned a distance of at least 0.5 inches.**

Klamer teaches that it is known in the art to provide a butt joint of the above configuration as disclosed above in the 102 rejections, with drywall sheets (18, 20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of Gunti's joint with the sheets of drywall (18, 20 as taught by Klamer in order to provide a joint which facilitates ready spackling of a joint of sheetrock/drywalls and to provide joint supports from the stud of the wall to a wall panel (column 1, lines 28-36).

In regards to the middle section has a width of at least six inches, the angle sections and supports have a width of 0.5 inches, and the first and second sections are positioned a distance of at least 0.5 inches. It would have been an obvious matter of

design choice to make the middle section with a width of at least six inches, the angle sections and supports with a width of 0.5 inches, and the first and second sections positioned a distance of at least 0.5 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. It also would have been an obvious matter of design choice to modify the size of the joint system, since applicant has not disclosed that these dimensions solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the size of the joint system disclosed

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klammer in view of Ganssle, US Patent # 4,392,336.

Klammer discloses the claimed invention as stated above in claim 1, except for the middle section, angled sections, first and second sections are comprised of a solid metal material. Ganssle teaches that it is known in the art to provide a drywall butt joint system (20) made of metal material (column 2, line 69 and column 3, line 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the material to metal as taught by Ganssle's joint system with the joint system of Klammer since it is stated in column 2, lines 27-33, that the straps are reinforced in the central recessed portion by beading or welding reinforcing metallic material in order to resist pulling forces generated by the wallboard panels to unbend.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klammer in view of Paoletti, US Patent # 3,675,383.

Klamer discloses the claimed invention as stated above in claim 1, except for the middle section, angled sections, first and second sections are comprised of a solid plastic material. Paoletti teaches that it is known in the art to provide a drywall butt joint system (16) made of plastic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the material to plastic as taught by Paoletti's joint system with the joint system of Klamer since it is known in the art that other suitable rigid materials could also be used such as, for example, plastic as stated in column 1, lines 66-67, and column 2, line 1, also, it would provide a clip resistant to rusting, and would be inexpensive and is readily installed on the job site (column 1, lines 27-28).

Claims 5, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klamer.

Klamer discloses the claimed invention as stated above in claim 1, except for the middle section has a width of at least six inches, the angle sections have a width of 0.5 inches, and the first and second sections are positioned a distance of at least 0.5 inches. It would have been an obvious matter of design choice to make the middle section with a width of at least six inches, the angle sections with a width of 0.5 inches, and the first and second sections positioned a distance of at least 0.5 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. It also would have been an obvious matter of design choice to modify the size of the joint system, since applicant has not disclosed that these dimensions solves any

stated problem or is for any particular purpose and it appears that the invention would perform equally well with the size of the joint system disclosed.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gunti in view of Klamer and further in view of Ganssle.

Gunti in view of Klamer discloses the claimed invention as stated above in claims 1 and 11, except for the middle section, angled sections, first and second sections are comprised of a solid metal material. Ganssle teaches that it is known in the art to provide a drywall butt joint system (20) made of metal material (column 2, line 69 and column 3, line 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the material to metal as taught by Ganssle's joint system with the joint system of Gunti in view of Klamer since it is stated in column 2, lines 27-33, that the straps are reinforced in the central recessed portion by beading or welding reinforcing metallic material in order to resist pulling forces generated by the wallboard panels to unbend.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gunti in view of Klamer and further in view of Paoletti.

Gunti in view of Klamer discloses the claimed invention as stated above in claims 1 and 11, except for the middle section, angled sections, first and second sections are comprised of a solid plastic material. Paoletti teaches that it is known in the art to provide a drywall butt joint system (16) made of plastic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the material to plastic as taught by Paoletti's joint system with the joint system of



Gunti in view of Klamer since it is known in the art that other suitable rigid materials could also be used such as, for example, plastic as stated in column 1, lines 66-67, and column 2, line 1, also, it would provide a clip resistant to rusting, and would be inexpensive and is readily installed on the job site (column 1, lines 27-28).

Claims 7 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gunti in view of Klamer.

Gunti in view of Klamer discloses the claimed invention as stated above in claims 1 and 11, except for the middle section has a width of at least six inches, the angle sections have a width of 0.5 inches, and the first and second sections are positioned a distance of at least 0.5 inches. It would have been an obvious matter of design choice to make the middle section with a width of at least six inches, the angle sections with a width of 0.5 inches, and the first and second sections positioned a distance of at least 0.5 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. It also would have been an obvious matter of design choice to modify the size of the joint system, since applicant has not disclosed that these dimensions solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the size of the joint system disclosed.

### ***Response to Arguments***

Applicant's arguments filed 8/15/03 have been fully considered but they are not persuasive.

In regards to applicants argument that Klammer does not disclose all of the elements of claim 1, in regards to the examiners interpretation of figure 1, showing an angle of greater than 180 degrees, the examiner recognizes the argument, and the examiner asks the applicant to please review the newly submitted figure 1 of Klammer for better clarity of where the examiner was interpreting the angle to come from, parts 12 and 14 of figure 1, down to what is interpreted to be the angled sections as shown on the attached figure.

In response to applicant's argument that Gunti is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, although the apparatus of Gunti is not necessarily related to the drywall industry or to a drywall butt joint, the actual structure of Gunti is similar in shape to the invention, as well as the claim limitations are readable on the structure of Gunti.

Also, In response to applicant's argument that Gunti is not "reasonably pertinent to the particular problem with which the inventor was involved" (i.e. for recessing a butt joint between to sheets of drywall), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative

difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christy M Green whose telephone number is 703-308-9693. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Application/Control Number: 10/053,753  
Art Unit: 3635

Page 11

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



November 5, 2003



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600





